

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XI, pertaining to a)
Deferred Retirement Option Plan)
(DROP) for members of the Highway)
Patrol Officers' Retirement System)

TO: All Concerned Persons

1. On October 29, 2015, the Public Employees' Retirement Board published MAR Notice No. 2-43-535 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1778 of the 2015 Montana Administrative Register, Issue Number 20.

2. The Public Employees' Retirement Board has adopted the following rules as proposed: New Rule I (2.43.4006), II (2.43.4009), III (2.43.4010), IV (2.43.4013), VI (2.43.4016), VII (2.43.4017), VIII (2.43.4018), X (2.43.4023) and XI (2.43.4024).

3. The Public Employees' Retirement Board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE V (2.43.4015) ESTIMATED MONTHLY DROP ACCRUAL

(1) Once a member files an application to participate in the DROP and the participant's DROP period begins, ~~the participant may be paid~~ estimated monthly DROP accruals will be paid into the participant's DROP account.

(2) and (3) remain as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1005, MCA

NEW RULE IX (2.43.4020) EMPLOYMENT AFTER THE DROP PERIOD

(1) remains as proposed.

(2) The participant's monthly service retirement benefit payments will begin the month following the month in which the participant terminates post-DROP HPORS-covered employment.

(3) remains as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1007, MCA

4. The Public Employees' Retirement Board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: An employee of the Legislative Services Division noted that it may be helpful to clarify under NEW RULE V that the estimated accruals may be deposited to the participant's DROP account, not directly to the participant.

RESPONSE 1: The board agrees and has amended NEW RULE V to address this concern.

COMMENT 2: An employee of the Legislative Services Division noted that the term "post-DROP employment" in NEW RULE IX could be misinterpreted and suggested it be clarified using the term "participant terminates HPORS employment."

RESPONSE 2: The board agrees with this comment, in general, and has amended NEW RULE IX to address the concern.

COMMENT 3: A commenter suggested the board adopt a rule with a contingent voidness clause because the HPORS DROP has not yet been approved by the Internal Revenue Service (IRS). The commenter suggested that this rule would put HPORS members on notice that if they do enter the HPORS DROP there is some risk that the DROP might not be approved by the IRS and in such event, DROP participants may be required to pay money back to the retirement system if they have ended their DROP period and been paid their DROP benefit.

RESPONSE 3: The board is satisfied that the contingent voidness clause listed in Section 10, Ch. 258, L. 2015 and contained in the most recent codification of the 2015 Montana Code Annotated is sufficient to put HPORS members on notice that there is some risk that an unfavorable ruling from the IRS is possible. Rules are not supposed to duplicate statute. The board will ensure that HPORS members are fully advised of the issue at the time they apply to participate in the DROP.

/s/ Melanie A. Symons

Melanie A. Symons
Chief Legal Counsel
Rule Reviewer

/s/ Sheena Wilson

Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State December 14, 2015